

EDUCATION & LOCAL GOV'T IC
JANUARY 23, 2012
Exhibit 5

Education and Local Government
Interim Committee
Attn: Leeann Kurtz
PO Box 201706
Helena MT 59620-1706

September 12, 2011

Re: Family Transfers

Committee Members:

I understand that your committee has been given the task of studying the leases and rents subdivision exemption. I am writing this letter to request that you expand this study to include the family transfer exemption. The exemption is defined in MCA § 76-3-207. Part 4 of this statute allows the governing body to charge a fee to review these exemptions. In Ravalli County, our Subdivision Regulations addresses family transfers within Section 4-5 Divisions of Land Which May Be Exempt From Review But Subject to Survey Requirements and Zoning Regulations. It goes on to say ... Unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the MSPA, but are subject to the surveying requirements of 76-3-401, MCA, etc. (See Exhibit 1).

Each of these paragraphs seems straightforward and innocuous on the surface; however, when put into practice, we have experienced a plethora of questionable interpretations and procedures. There is no denying that using this method to divide land as opposed to going through the "subdivision" process takes less time and of course is less expensive. The difficult question is how to determine when the use of this exemption is an evasion of the subdivision requirements?

The attached plats (Exhibit 2) are a few examples of the amount of land divided by using this exemption in our county. Whole 40 acre parcels have been carved up into numerous pieces by "gifting" to family members. For example, a wife would be deeded the entire piece from the husband and then turn right around and transfer new smaller parcels to her mother, her father and each one of the children, some of whom were only months old. Then those same family members divide the parcels even further by gifting to their children, and so on. We have even seen an individual deed a parcel to his deceased mother.

The maps also illustrate the impact on the neighboring properties where once they had unrestricted views and are now seeing houses. In addition to increased traffic on their private lanes, there are new problems of getting irrigation water to their stock and the irrigation districts struggle to get notification to update their records. These "non-subdivisions" were never publicly announced so the surrounding land owners had no way

to voice their concerns. Most of these surrounding landowners contact my office concerned that the county approved a subdivision next door to them without any notice. They simply do not understand that these exemptions are not legally a "subdivision" and they are confused when we try to explain it to them.

Another aspect we are seeing involves financial hardships. We hear the term "financial hardship" a lot in relation to family transfers. The property owners do not realize their taxes will increase as much as they do when they split a parcel into several pieces. Frequently, they ask for relief by applying for an aggregation exemption to undo what has just been divided. The children who are gifted the parcels find it difficult to receive funding for their higher education because they now own property. Mortgages that were put on the larger parcels by the parents are now going into foreclosure which also takes the property away from the children who recently received it.

Then we are confronted by the people who are requesting to immediately sell the parcels they just acquired through this exemption for many different reasons, mainly financial hardship. In handling these subsequent transfers, it seems each county has a different procedure. These are decisions that are never easy to make as a county – do you form a procedure to look for a rebuttable presumption of evasion or do you turn a blind eye on the situation entirely? Either way could eventually expose a county to liability.

I am asking your assistance in forming additional clarity in this area; specifically, guidance on how these exemptions should be reviewed. I feel the intention for the creation of this exemption was admirable in its inception but the everyday applications continue to be difficult for many counties.

Thank you for your consideration,

A handwritten signature in cursive script that reads "Regina Plettenberg". The signature is fluid and elegant, with the first name and last name clearly distinguishable.

Regina Plettenberg
Ravalli County Clerk and Recorder
215 South 4th Street, Suite C
Hamilton, MT 59840
406-375-6551

adopted pursuant thereto

M. 1947, 11-3876.

fees for examination of
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Sec. 19, Ch. 213, L. 1975; amd. Sec.
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amd. Sec. 2, Ch. 498, L. 1975; R.C.M.

condominiums, townhomes, or
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(1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621 are complied with; or

(2) the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 1, Ch. 534, L. 2001; amd. Sec. 1, Ch. 229, L. 2007; amd. Sec. 4, Ch. 373, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 373 near beginning inserted "townhomes, or townhouses, as those terms are defined in 70-23-102"; in (1) and (2) inserted references to townhomes or townhouses; and made minor changes in style. Amendment effective May 12, 2011.

76-3-204. Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(10); amd. Sec. 1, Ch. 500, L. 1985.

76-3-205. Exemption for airport land and state-owned lands — exception. (1) A division of land created by lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority is not subject to the requirements of this chapter if the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities.

(2) A division of state-owned land is not subject to the requirements of this chapter unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(5); amd. Sec. 1, Ch. 548, L. 1999.

76-3-206. Exemption for conveyances executed prior to July 1, 1974. This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(part).

76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations — exceptions — fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body before an amended plat may be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to review under parts 5 and 6 of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed \$200, for the examination.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(6); amd. Sec. 1, Ch. 379, L. 1985; amd. Sec. 1, Ch. 569, L. 1989; amd. Sec. 4, Ch. 272, L. 1993; amd. Sec. 3, Ch. 366, L. 1993; amd. Sec. 3, Ch. 468, L. 1995; amd. Sec. 2, Ch. 436, L. 2003; amd. Sec. 2, Ch. 563, L. 2003; amd. Sec. 1, Ch. 252, L. 2005; amd. Sec. 12, Ch. 446, L. 2009.

76-3-208. Subdivisions exempted from surveying and filing requirements but subject to review provisions. Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this chapter but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(7).

76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of this chapter. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(4).

76-3-210. Repealed. Sec. 23, Ch. 446, L. 2009.

History: (1)En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; Sec. 11-3862, R.C.M. 1947; (2)En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; Sec. 11-3863, R.C.M. 1947; R.C.M. 1947, 11-3862(8), 11-3863(3.1); amd. Sec. 20, Ch. 582, L. 1999; amd. Sec. 10, Ch. 599, L. 2003.

Part 3

Land Transfers

Part Cross-References

County taxation, Title 7, ch. 6, part 25.

Property tax levies, Title 15, ch. 10.

76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form unless the plat is located in an area over which the state does not have jurisdiction.

(2) The clerk and record land division described in

(3) If transfers not in commence action to enjoin of this chapter. The cost of

History: En. Sec. 9, Ch. 5
1947, 11-3867(part); amd. Sec.

76-3-302. Restriction
surveying requirement

recorder of any county in possession of a parcel or tract required certificate of survey the instrument of transfer

(2) Subsection (1) doe

(a) is in a location in

(b) was created before includes a reference to a documents that, if recorded reference or document mu

(3) The reference or description of the property

History: En. Sec. 4, Ch. 5;
2, Ch. 552, L. 1977; R.C.M. 194

76-3-303. Contract provisions of 76-3-301, a conditionally approved, tl subdivision if all of the fol

(1) under the terms of any payments to an escrow agent chartered to do business in

(2) under the terms of the contract of purchase, the purchasers of lots in the project shall be bound to the subdivider until the final

(3) the contracts and subdivision is not filed with approval, the escrow agent purchaser has made unde

(4) the county treasurer

(5) the contracts contain a provision that is the subject of this case, and the property has been filed with the county clerk and transferred in any manner

History: En. Sec. 9, Ch. 1, 1947, 11-3867(4); amd. Sec. 2,

76-3-304. Effect of

compliance with the provisions shown on and being a part itself or any copy of the plan copy thereof shall be regarded received in evidence in all

History: En. Sec. 12, Ch
76-3-305. Vacation
provided in this part may l
7-14-2616(1) and (2), 7-1

Chapter 4

Subdivision and Survey Exemptions

- i. The reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation;
- ii. The proposed relocation creates a parcel of less than 160 acres which, prior to the relocation included more than 160 acres;
- iii. The proposed relocation creates a new buildable tract from one that did not have a practical building site;
- iv. The proposed relocation significantly changes the area between the existing and proposed parcel sizes; or
- v. The proposed relocation would cause significant impacts to the criteria listed in Section 3-2-8 that would likely lead to imposition of significant conditions of approval, or denial, of an equivalent subdivision application.

4-5-2. A Gift or Sale to a Member of the Immediate Family [76-3-207(1)(b), MCA]

a. Statement of Intent

The intent of this exemption is to allow a landowner to convey one parcel outside of a platted subdivision to each member of his or her immediate family, without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property. This exemption may be used only by grantors who are natural persons and not by non-corporal legal entities such as corporations, partnerships, and trusts.

b. Required Information

A certificate of survey (or recording of an instrument of conveyance) that uses this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, the parcel to be conveyed under this exemption, and the landowner's certification of compliance [ARM 24.183.1104(1)(f)]. The landowner must provide evidence of the familial relationship between the proposed grantor and grantee.

c. Use of Exemption

One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under the MSPA and these regulations. However, the use of the exemption may not create more than one new parcel per eligible family member.

d. Rebuttable Presumptions

- i. Any proposed use of the family gift or sale exemption to divide a tract that was previously created through the use of an exemption will be presumed to be adopted for purposes of evading the MSPA.

Chapter 4

Subdivision and Survey Exemptions

- ii. The use of the family gift or sale exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space, or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the MSPA.
 - iii. A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption will result in the presumption the method of disposition is adopted for the purpose of evading the MSPA and these regulations.
 - iv. The use of the exemption to create more than one additional or remaining parcel of less than 160 acres in size is presumed to be adopted for the purpose of evading the MSPA and these regulations.
- e. Restriction on Subsequent Transfer
- The transfer or potential sale of the gifted tract created by the family gift or sale exemption within three years of creation of the tract will result in the presumption that the use of the exemption was adopted for the purposes of evading the MSPA and the recordation of the instrument of conveyance of a parcel created by family gift or sale within three years of creation may be subject to refusal of the Clerk and Recorder.

4-5-3. Divisions of Land Proposed for Agricultural Use Only [76-3-207(1)(c), MCA]

- a. Statement of Intent
- This exemption is intended to allow a landowner to create a parcel for gift, sale, or agreement to buy and sell, outside a platted subdivision, without subdivision review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial, or industrial buildings, which require water or sewer, will be built on it.
- b. Required Information
- A certificate of survey that uses this exemption to create a parcel only for agricultural use requires a covenant running with the land in accordance with 76-3-207(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey. [ARM 24.183.1104(f)(iii)]
- c. Use of Exemption
- i. "Agricultural purpose," for purposes of these evasion criteria, means all aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, or harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including forestry or lumbering operations, preparation for market or delivery to storage, to market, or to carriers for transportation to market [See 41-2-103(1), MCA.]. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.

SCALE: 1 INCH 300 FEET



